

**PLANNING & DEVELOPMENT SERVICES DEPARTMENT REPORT**

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**DATE:** April 20, 2000

**TO:** Orange County Zoning Administrator

**FROM:** Planning and Development Services Department/Current Planning Services Division

**SUBJECT:** Public Hearing on Planning Application PA00-0016 for Variance and Use Permit

**PROPOSAL:** A variance is requested from the front and rear yard setback standards in conjunction with the construction of a new single family dwelling. A use permit is requested to allow over height walls in the front and rear setback areas.

**LOCATION:** In the community of Emerald Bay at 326 Emerald Bay, Laguna Beach. Fifth Supervisorial District.

**APPLICANT:** David and Melissa Arnold

**STAFF** William V. Melton, Project Manager

**CONTACT:** Phone: (714) 834-2541 FAX: (714) 834-4652

**SYNOPSIS:** Current Planning Services Division recommends Zoning Administrator approval of PA00-0016 subject to the attached Findings and Conditions of Approval.

**BACKGROUND:**

The subject site is 5,404 square feet in area and is developed with a 1,954 square foot single family dwelling. The applicant proposes to demolish the existing single family dwelling and construct a new two-story, 3,544 square foot single family dwelling. In order to construct the dwelling as proposed, the applicant requests approval of a variance to the front and rear yard setback standards to permit: 1) a front building setback of 14 feet-7 inches when a setback of 20 feet is standard; and, 2) a rear building setback of 5 feet when a setback of 25 feet is standard. The applicant also requests a use permit to allow: 1) a 12 feet high retaining wall at the rear property line when a maximum wall height of 8 feet is standard; and, 2) a 6 feet high wall in the front setback area when a maximum wall height of 3 ½ feet is standard. The existing house on the property has a rear yard setback of 5 feet and a front setback of 10 ½ feet.

**SURROUNDING LAND USE:**

The project site and all surrounding properties are zoned R1 (CD) and developed with, or approved for single family dwellings. Emerald Bay also has a certified Local Coastal Program. All properties ocean side of Pacific Coast Highway are also subject to regulations contained in Zoning Code Section 7-9-118 "Coastal Development" District. Properties inland of Pacific Coast Highway are not subject to the CD regulation.

**REFERRAL FOR COMMENT AND PUBLIC NOTICE:**

A Notice of Hearing was mailed to all owners of record within 300 feet of the subject site. Additionally, a notice was posted at the site, at the 300 N. Flower Building and as required by established public hearing posting procedures. A copy of the planning application and a copy of the proposed site plan were distributed for review and comment to three County Divisions and the Emerald Bay Community Association.

As of the writing of this staff report, no comments raising issues with the project have been received from other County divisions by staff. The Emerald Bay Community Association has reviewed the proposal and has given preliminary approval. Final approval is given with County approval of PA00-0016.

**CEQA COMPLIANCE:**

The proposed project is Categorically Exempt (Class 2, replacement or reconstruction of similar type structures or use) from the requirements of CEQA. Appendix A contains the required CEQA Finding.

**DISCUSSION/ANALYSIS:**

As noted in the Background section of this report, the existing dwelling has a front setback of 10 ½ feet and a rear setback of 5 feet. The applicant is requesting a front setback of 14 feet-7 inches and a rear setback of 5 feet, which is the same as the existing rear setback. This is a corner lot only a portion of the proposed dwelling will be in the setback area. The garage is setback over 18 feet the edge of the street. A garage setback of 6 feet is typical in Emerald Bay. The setbacks proposed are similar to the existing setbacks and do conform to the Emerald Bay CC&R development standards.

This proposal is similar to a recently approved project on the adjacent site to the north (328 Emerald Bay) also owned by the applicant. Planning Application PA99-0204 was for a Variance and Use Permit approved by the Zoning Administrator on March 16, 2000. A variance was approved for a rear setback of 5 feet and a use permit approved for over height retaining walls. The major difference between PA99-0204 and the current proposal is that 328 Emerald Bay is vacant. Additionally, the current project site is a corner lot and the applicant requests a front setback variance. The planning report prepared for PA99-0204 is included with this report as Exhibit 2.

The use permit for over height retaining walls in the rear setback is required because of the Emerald Bay CC&R height restrictions. Because the Emerald Bay CC&R establishes a maximum elevation height for the new dwelling, the applicant is forced to lower the building pad elevation. Because the pad is lowered significantly, the applicant is forced to construct the over height retaining walls. The mass and height of these retaining walls will not be obvious to the adjoining property owners. Only a height of 5 to 6 feet above grade is visible. These retaining walls are required in order to construct a typical two-story dwelling on this site without the need for a basement level and to provide adequate light and air to the first floor level. The applicant's property to the north was also approved for over height walls. The plans show over height walls between the two properties. However, these walls will be reduced in height when the grading is completed on the two lots and the finish pad elevations are lowered.

The over height walls in the front setback area are to provide privacy since the side of the property acts as the open space area of the lot. The wall is setback 5 feet from the property line and 9 feet from the edge of the road pavement. The setback of the wall should not cause a site distance problems for vehicles on the street or from backing out of the garage. Staff is including the standard condition for site distance to insure there will be no site distance problem.

There is one feature proposed for the rear of this house that was not proposed for the house at 328 Emerald Bay. The site plan calls for the use of French doors in the second floor family room leading out to a small 4 ½ feet wide balcony projecting 18 inches into the proposed 5 feet rear setback. The house on the adjoining lot to the rear (324 Emerald Bay) is 5 feet from the property line (a side property line). The second floor balcony could raise a privacy concern. With previous variance requests, balconies or decks at the rear of a dwelling were modified or deleted for reasons of privacy.

At the March 16, 2000 Zoning Administrator hearing for PA99-0204, Mr. Larry Jacobs, who was in the process of purchasing the home at 324 Emerald Bay, testified that the 5 foot rear setback proposed may cause a privacy problem. The proposed dwelling on that lot did not have a balcony and the main window facing his property was a bedroom window. If the Zoning Administrator determines that this balcony could compromise privacy on the adjoining property, he could condition the deletion of the balcony from the project. Following is suggested wording for such a condition:

*Prior to the issuance of a building permit, the applicant shall submit revised site plans to the Manager, Current Planning Services Division for review and approval showing the removal of the second floor balcony and replacement of the French doors with standard window treatment.*

Regarding the front and rear setback variance request, staff is of the opinion that the proposal is consistent with the setbacks of the existing house. Additionally, the 5 feet setback request is the same as was approved on the lot to the north through PA99-0204. However, before this variance request can be approved, the Zoning Administrator, in accordance with State and County planning laws, must be able to make the following variance findings listed below. If the Zoning Administrator can not make these findings, the application must be disapproved.

1. There are special circumstances applicable to the subject building site which, when applicable zoning regulations are strictly applied, deprive the subject building site of privileges enjoyed by other property in the vicinity and subject to the same zoning regulations.
2. Approval of the application will not constitute a grant of special privileges which are inconsistent with the limitations placed upon other properties in the vicinity and subject to the same zoning regulations when the specified conditions are complied with.

Staff is of opinion that the Zoning Administrator is able to make these two special variance findings and approved the requested variance. The special circumstances for approving the variance requested for this proposal is in Finding 10 of Appendix A.

**RECOMMENDED ACTION:**

Current Planning Services Division recommends the Zoning Administrator:

- a. Receive staff report and public testimony as appropriate; and,
- b. Approve Planning Application PA00-0016 for Variance and Use Permit subject to the attached Findings and Conditions of Approval.

Respectfully submitted

C. M. Shoemaker, Chief  
CPSD/Site Planning Section

WVM

Folder: D/Emerald Bay

**APPENDICES:**

- A. Recommended Findings
- B. Recommended Conditions of Approval

**EXHIBITS:**

1. Applicant's Letter of Explanation
2. Staff report for PA99-0204 dated March 16, 2000
3. Site Plan and site photo

**APPEAL PROCEDURE:**

Any interested person may appeal the decision of the Zoning Administrator on this permit to the Orange County Planning Commission within 15 calendar days of the decision upon submittal of required documents and a filing fee of \$245.00 filed at the Development Processing Center, 300 N. Flower St., Santa Ana.